

Reply to Office Action of November 3, 2005

REMARKS

Applicant respectfully requests reconsideration in view of the amendment and following remarks. Claims 1, 91 and 93-101 are rejected under 35 USC 103 as being obvious over AF 300 from Nufarm MSDS. Claim 1 and 91-101 are rejected under double patenting. The applicant respectfully traverses these rejections. The Examiner has not rejected claims 102-104.

The applicant has three independent claims (claims 1, 91 and 104). Claim 104 is not rejected over Nufarm MSDS. The applicant points out that claims 91-104 were deemed allowable in U.S. 2003-0148889 and issued in U.S. Patent no. 6,803,345.

Claim 1

The applicant's claimed invention requires that said chlorinated carboxylic acid herbicide is dissolved in the surfactant. Enclosed is a declaration from Johnnie Roberts which was submitted in the parent application U.S. Serial No. 09/916,611 which he indicated that 2,4-D did not dissolve in the surfactant used in the prior art of AF-300 as is required by the applicant's claimed invention of claim 1. The period was for approximately 66 hours. AF 300 does not disclose nor suggest the claimed feature that said chlorinated carboxylic acid herbicide is fully dissolved in the surfactant. For this reason alone the applicant's claimed invention is not obvious over AF 300 and this rejection should be withdrawn.

Also attached in Appendix 1 is the Federal Government's test guidelines that have been developed by the Office of Prevention, Pesticides and Toxic Substances, United States Environmental Protection Agency for use in the testing of pesticides and toxic substances, and the development of test data that must be submitted to the Agency for review under Federal

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regulations. The U.S. government indicated that the testing is at room temperature from 20 to 25°C.

This is also confirmed in IUPAC definitions found in
<http://www.cas.org/ONLINE/UG/propdefinitions.pdf>

The Examiner will note under the heading molecular solubility the definition is "number of moles of a compound that dissolve in pure water at 25 degrees C to produce a liter of saturated solution (see Appendix 2)

This is further confirmed in Compilation of ASTM Standard Definitions 6th ed. 1986. The Examiner will note the definition of liquid at the bottom of page 447 (a substance that has a definite volume but no definite form, except such given by its container. It has a viscosity of ... at 104°F (40°C)) (see Appendix 3). Therefore if the temperature is greater than 40°C, the substance would not be a liquid.

Claim 91

The applicant points out that claims 91-104 were deemed allowable in U.S. 2003-0148889 and issued in U.S. Patent no. 6,803,345. The applicant requests that an interference be provoked with respect to these claims.

With respect to the double patenting rejection, the applicant will file a terminal disclaimer to obviate this rejection when the prior art rejection is withdrawn.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

MAR. 27. 2006 12:08PM

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A two month extension fee has been paid. Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 00306-00355-US from which the undersigned is authorized to draw.

Respectfully submitted,

By


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ENCLOSURE: DECLARATION FROM JOHNNIE ROBERTS